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IN THE

Supreme Court of the United States

October Term 1949

No. 229

CAPITAL AIRLINES, INC., *Petitioner*

v.

RICHARD I. EDWARDS and JAMES A. YOUNG, *Respondents*

Brief in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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THE PARTIES

A cross petition for certiorari is filed simultaneously herewith. In order to avoid confusion, petitioner, Capital Air Lines, Inc.,[1] will be referred to as "Capital" and the cross petitioners-respondents as the "plaintiffs".

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[1] Formerly Pennsylvania Central Airlines, Inc. In the record Capital is sometimes referred to as Pennsylvania Central Airlines and sometimes as PCA.

OPINIONS BELOW

The opinions below have not been reported. The District Court wrote an "informal memorandum opinion" (R. 40-41). The Court of Appeals handed down an opinion reversing the decision of the District Court (R. 192-200) and an opinion denying rehearing (R. 208-209).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). The order denying rehearing was entered on May 10, 1949 (R. 210). The petition for certiorari was filed on August 8, 1949. Earlier, on July 18, 1949, the Chief Justice had extended the time to file a cross petition for certiorari until September 7, 1949 (R. 213). Thereafter, on August 15, 1949, the Chief Justice extended the time to file both a cross petition and a brief in opposition to the petition until October 7, 1949 (R. 213).

STATUTES INVOLVED

The petition involves Title II of the Railway Labor Act (45 U. S. C. §§ 181-188), Capital being an interstate air carrier. The cross petition involves the Selective Training and Service Act of 1940, Section 8 of which is set out in the Appendix thereto.

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly ruled (R. 199) that "under the combination of circumstances here present, these appellants [plaintiffs] have a right to have a court examine" the award of a System Board of Adjustment purporting to reduce their seniority.

2. Whether the Court of Appeals properly construed a certain collectively bargained employment contract

between Capital and the Air Line Pilots Association, and whether it properly determined plaintiffs' seniority under that contract.

3. Whether the Court of Appeals properly refused to find that plaintiffs had been discharged just before they entered military service, and whether it was correct in finding instead that they had been laid off in a reduction in force.

STATEMENT

The plaintiffs are pilots in the employ of Capital. They had been employed as pilots before the war. In 1941 and 1942, respectively, they left Capital and entered military service. In 1945, both returned and sought reemployment. Capital then made a thorough investigation of their cases and decided that both had been laid off in reductions in force prior to entry into military service. Capital therefore concluded, in accordance with the later decision of this Court in *Fishgold* v. *Sullivan Corporation*, 328 U. S. 275, that despite the layoffs, plaintiffs were in its "employ" when they entered military service, and that they accordingly were entitled to the rights of returning veterans.[2] Plaintiffs were then reemployed with full seniority accrued from the date of their original employment to the date of their reemployment including credit for time spent in military service (R. 123-124, 129).

Soon after such reemployment, plaintiffs' seniority was challenged by the Air Line Pilots Association, a union representing *all* Capital pilots as collective bar-

[2] Capital recognized plaintiffs' rights both under the Selective Training and Service Act and under a collectively bargained employment contract then in force between Capital and its pilots. (R. 12-29, 123-124, 129).

gaining agent under Title II of the Railway Labor Act. Plaintiffs are *not* members of the Association. They have applied for membership and have been turned down (R. 86, 96, 109).

The Association began grievance proceedings under the collectively bargained employment contract then in force between it and Capital (R. 12-29). It took the position that plaintiffs had not in fact been laid off before entering military service. It maintained instead that they had been discharged. In Young's case, the reason for the discharge was said to be incompetence (R. 158). In the case of Edwards, no motive or reason was given, and the only suggestion of a reason which anyone has made is that he is a Jew.[3] The grievance came on for hearing before a company official in accordance with the contract, and the decision was against the Association (R. 135-141). On two intra-company appeals, the decision was upheld (R. 141-145). The Association then took a third appeal to Capital's System Board of Adjustment, a body established by contract between Capital and the Association consisting of two representatives of the Association and two of Capital (R. 23-29). The Board for the first time sustained the Association's contentions (R. 145-149).

Capital then threatened to reduce plaintiffs' seniority because of the Board's decision, and plaintiffs immedi-

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[3] At the pretrial conference in this case, counsel for the Association stated that Edwards was discharged because he was Jewish (R. 59). Capital has vigorously denied that its employment practices are in any way tinged with anti-Semitism (R. 108). And the only other reference in the record to anti-Semitism relates to a warning given Edwards when he returned from the Navy that he might expect some pilots to be hostile (R. 84-86, 121-122). No one has suggested that Edwards was not an excellent pilot and had not given excellent service prior to his layoff (R. 59).

ately instituted this suit seeking: (1) an injunction against such impairment of their seniority; and (2) a declaration of their rights. After trial on the merits, the District Court dismissed their complaints, but the Court of Appeals reversed (R. 40-41, 192-200, 208-209). It held that the Board's award was not conclusive on the plaintiffs under all the circumstances divulged by the record. It then went on to hold that plaintiffs had been laid off and that under the employment contract, they were entitled to seniority accrued from the date of original employment to the date of the layoffs. It also held that plaintiffs were not entitled to seniority accrued while in military service either under the contract or under the Selective Training and Service Act.

REASONS FOR THE DENIAL OF CAPITAL'S PETITION FOR CERTIORARI

Capital has petitioned for certiorari on the sole ground that the Court below erroneously failed to treat the award of the System Board as "final and binding" on the plaintiffs. This, it is said, presents a question of law so important as to merit review in this Court. The decision below, however, does not present any question of broad significance and is narrowly confined to special and peculiar facts. No conflict of decisions between Circuit Courts of Appeals is claimed by Capital or in any way involved. Capital admits that the decision is not in conflict with any decision of this Court (Petition, p. 11).

The special facts of this case are as follows: Under the Railway Labor Act, the Association represents all Capital pilots, both members and non-members. The plaintiffs, who have been denied membership, are nonetheless forced to accept the Association. The Association occupies a trust relationship with all whom it rep-

resents. *Steele* v. *Louisville & Nashville Railroad*, 323 U. S. 196, 202-207. Yet it took sides in favor of some of its cestuis against other cestuis, the plaintiffs. It vigorously prosecuted the seniority grievance against plaintiffs (R. 133-190). In fact as well as form it carried the laboring oar. Having lost three times in the intra-company stages of the grievance proceeding, the Association took the case to a Board composed of four Association members (two of whom—the company representatives on the Board—were "inactive" because they were supervisory employees of Capital (R. 103). One of these "inactive" Association members on the Board, Captain Reid, had testified against one of the plaintiffs at the first hearing on the grievance (R. 158). The two active Association members, Captains Garlow and Bernier, had represented the Association at all previous stages of the grievance proceeding, and *thus presented the spectacle of unsuccessful prosecutors trying to win their case by climbing on the bench of the Appellate Court.* (R. 86, 87, 142, 144, 150, 151, 162, 167). Captain Bernier even went outside the Board room, procured hearsay evidence against one of the plaintiffs, and testified to it *from the bench* (R. 190). Plaintiffs, it is true, were present at the extraordinary proceedings before these prosecutor-witness-judges, but they were not recognized as parties (R. 179-180), and they objected to the propriety of the grievance proceeding and to jurisdiction of the Board at every step. (R. 153-155, 160-161, 163-165, 170-173, 176-178, 180-190).

These special circumstances bring the case within the *Steele* case (*supra*). They show that the plaintiffs have been the victims of a Board made up of their active adversaries, in the deliberations of which they had no voice, and which was not only inherently prejudiced

as a matter of law (*Steele* case, 323 U. S. at pp. 205-207) but prejudiced in fact as well. Accordingly, the plaintiffs maintained that despite the wide jurisdiction of System Boards over ordinary grievances, this *particular* Board had no jurisdiction over this *particular* dispute.

The Court below did not accept plaintiffs' argument completely, but it held that under all the circumstances, the Board's award was not conclusive. And the Court was very careful to limit its decision to the precise facts. A narrower decision can scarcely be imagined. It expressly negated any decision of broad principle. It said:

> "We make this decision no broader than the case. We are fully conscious that implications of more general doctrine seem to appear. But other holdings can await other cases." (R. 199).

Such a narrow holding does not merit review in this Court. In *Nord* v. *Griffin,* 86 F. 2d 481 (C. C. A. 7th, 1936), *cert. denied,* 300 U. S. 673, this Court has already refused to review a decision of a Circuit Court of Appeals that an award of the National Railroad Adjustment Board did not bind an employee who, because of peculiar circumstances, was not adequately represented. And Capital does not contend here that the System Board's award would be conclusive if, for instance, it appeared that the plaintiffs had no notice of the proceeding. Capital's point really is that the plaintiffs were *sufficiently* represented before and on the Board and that *under all the circumstances* they were treated fairly. Thus the issue before the Court below was whether, under all the circumstances, the plaintiffs *were* treated fairly. The lower Court's care-

ful consideration of the facts and its disagreement with Capital plainly raise no questions for this Court.

Respectfully submitted,

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